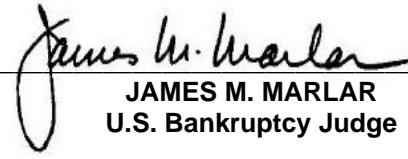


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3 Dated: April 22, 2008
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JAMES M. MARLAR
U.S. Bankruptcy Judge6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA
910 In re:
11 FIRST MAGNUS FINANCIAL
12 CORPORATION,
13 Debtor.) Chapter 11
) No. 4:07-bk-01578-JMM
) **MEMORANDUM DECISION**14 The Debtor has asked this court to bar the proof of claim filed by WNS, Inc., as
15 untimely. The court set a bar date of January 3, 2008. WNS filed its proof of claim one day late,
16 on January 4, 2008.17 WNS argues that its attorney, Nancy March, misunderstood the discussion held
18 between her and the court at a hearing held on December 7, 2007, and wherein she felt that her client
19 had until January 7, 2008 within which to file a claim. Thus, in her view, the January 4 filing was
20 early. The transcript of December 7, 2007, does allow for that interpretation. Additionally, due to
21 Ms. March's long standing exemplary reputation and ethical professionalism in practice before this
22 court over the last 14 years, the court easily finds her explanation to be credible. This case does not
23 present a matter of "neglect," but instead only a matter of misunderstanding.24 Moreover, the estate is not shown to have suffered any prejudice due to the late filing.
25 WNS has been actively involved in the case since the outset, and through various pleadings and/or
26 arguments, has made it known that it believes itself to hold a claim alleged to be in the millions of
27 dollars. As such, WNS, even had it not filed a proof of claim, could have argued
28

1 that its claim was entitled to recognition as an "informal" proof of claim. *See, e.g., In re Holm*, 931
2 F.2d 620, 622 (9th Cir. 1991); *In re Wheatfield Business Park, LLC*, 308 B.R. 463, 466-67 (9th Cir.
3 BAP 2004). Happily, the case did not develop to this point.

4 To the extent that the court is required to find excusable neglect under FED. R. BANKR.
5 P. 9006(b)(1), the court so finds. Ms. March's misunderstanding was understandable, explainable
6 and not irresponsible.

7 The relevant cases support this decision. The four factors to be considered by the
8 court in deciding this issue are:

9
10 1) the danger of prejudice to the opposing party; 2) the length of
11 the delay and its potential impact on judicial proceedings; 3) the
12 reason for the delay, including whether it was within the
13 reasonable control of the movant, and 4) whether the movant
14 acted in good faith.

15 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498,
16 123 L.Ed.2d 74 (1993); *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004), cert. den., 544 U.S.
17 961, 125 S.Ct. 1726, 161 L.Ed.2d 602 (2005); *In re Merritt*, 2008 WL 559694 at *3 & n.6 (Bankr.
18 D. Or. 2008). Weighing each of the factors and applying them to the facts, the court concludes that
19 it would be unjust to disallow the ~~claim solely on the basis~~ that it was filed one day late.

20 Additionally, since the missed deadline was based on a court order, this court also has
21 the authority "to use its own discretion in the enforcement of deadlines set in its own orders."
22 *Thompson v. United States*, 202 B.R. 466, 467 (S.D. Ind. 1996).

23 A separate order will be entered which denies the Debtor's request to disallow the
24 WNS claim on the basis of untimeliness.

25
26 DATED AND SIGNED ABOVE.
27
28

1 COPIES served as indicated below
2 on the date signed above:

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31 By M.B. Thompson
32 Judicial Assistant

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7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**
9

10 In re:
11 FIRST MAGNUS FINANCIAL) Chapter 11
12 CORPORATION,) No. 4:07-bk-01578-JMM
13)
14) **ORDER**
15)
16) Debtor.
17)

18 Based on the Memorandum Decision issued simultaneously herewith,
19 IT IS ORDERED DENYING the Debtor's request to disallow the WNS claim
20 (Dkt. #1192) on the basis of untimeliness.

21 DATED AND SIGNED ABOVE.

1 COPIES served as indicated below
2 on the date signed above:

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